

## **Creating Order for a Disorderly Product**

By Shannon Auvil

With the passage of the Twenty-First Amendment and the flood of legal taps once more, states took on control of alcohol sales in the 1930s.<sup>i</sup> Early on, the U.S. Supreme Court reiterated the Twenty-First Amendment's grant of special power to the states:

The Twenty-First Amendment sanctions the right of a state to legislate concerning intoxicating liquors brought from without, unfettered by the Commerce Clause. Without doubt a state may absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of when or where produced or obtained, or the use to which they are to be put.<sup>ii</sup>

The states regulate the sale of alcoholic beverages in myriad ways, but there are two basic overarching schemes: license vs. control. In control states, the state itself enjoys a monopoly on the sale of liquor, but still issues licenses for the sale of wine and beer.<sup>iii</sup> In license states, the state grants licenses to retailers to sell all types of alcohol. For example, in New York, the State Liquor Authority and the Division of Alcoholic Beverage Control have regulated the production, distribution, and sale of all alcoholic beverages through licensure since 1934.<sup>iv</sup> Alternatively, in Alabama, the Alcoholic Beverage Control Board is the regulator of liquor and operates a chain of retail stores that sells most of the liquor in the state.<sup>v</sup> Alabama grants licenses to retailers to sell lesser alcoholic beverages such as beer and wine.<sup>vi</sup> Regardless of a state's regulatory scheme, the production, distribution, and sale of alcohol are controlled by an impressive network of closely monitored and enforced laws and regulations. Alcohol is unusual: no other product is the subject of constitutionally mandated state-level control and in no other product does licensing play such a huge role.

## **I. Order! Order in the Market!**

Because of the dangers associated with alcohol abuse and illicit use by minors, the only way to legally produce, distribute, or sell alcohol is with the prized alcohol license. For some, one license is not enough. Producers, importers, and wholesalers must obtain a federal basic permit from the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury before doing business.<sup>vii</sup> They, along with retailers and brewers, must also obtain a state license in every state they do business.<sup>viii</sup> The overwhelming modern consensus is that licensing maintains an orderly marketplace and ensures that local, state, and federal tax revenues are uniformly and reliably collected and protected.

Courts, including the Supreme Court, have time and time again reaffirmed the legitimacy of states' interest in regulating alcoholic beverages to achieve an orderly marketplace.<sup>ix</sup> The most common format for alcohol sales is the three-tiered system. In the three-tiered system, “manufacturers (producers) make and sell their products to wholesalers (movers), who then sell those products to retailers (sellers), who then sell to consumers.”<sup>x</sup> No entity in one tier is permitted to bleed into the activities in another tier. The results are overwhelmingly positive. The underlying goal of the three-tiered system is temperance, and the system “has been credited with the additional benefits of an orderly marketplace, a level playing field, product availability, safer products, and reliable and efficient tax collection.”<sup>xi</sup>

The alcohol licensing bureaucracy may seem complicated, but it yields a system of business that is one of the most secure and transparent in the nation. Alcohol producers, distributors, and sellers must comply with a spiderweb of local, state, and federal laws to stay in

business, and the consequences of noncompliance are steep. Such laws and regulations are in place to ensure safe handling, fair trade practices, and responsible provision of alcohol to consumers.<sup>xii</sup> Without them, the market could be infiltrated by irresponsible and unmonitored sellers, counterfeit alcohol, tax evasion, and other risks to consumers.

The positive oversight and management of licensing boards hit close to home in 2013 when Operation Swill shocked New Jersey residents. Operation Swill was an undercover operation and raid that exposed a retailer selling rubbing alcohol dyed brown as Scotch whiskey.<sup>xiii</sup> Several TGI Fridays restaurants were implicated in the operation.<sup>xiv</sup> One bar was accused of selling dirty water as liquor.<sup>xv</sup> The investigation also led to the bust of more than two dozen retailers who were illegally refilling liquor bottles—the common scam entails pouring cheap liquor into premium liquor bottles and selling it at premium prices.<sup>xvi</sup> Interestingly, the only punishment for the perpetrators was hefty fines;<sup>xvii</sup> no criminal charges were filed. At least one city council considered revoking an implicated licensee’s license, a serious punishment in New Jersey, where licenses are limited.<sup>xviii</sup> However, it is important to understand that the non-criminal nature of the punishment does not take away from the severity of the infractions. Rather, it demonstrates the civil character of licensing and alcoholic beverage control board enforcement.

## **II. Bans, Dram Shop Liability, & Advertising Restrictions: Public Safety Spills onto the Streets**

### **A. Bans on High-Risk Products**

With an orderly marketplace—and gatekeepers closely monitoring products and sales from manufacture to the point of sale—come benefits to public health and safety. The potential for

protection of public health and safety in the realm of alcohol sales is wide-ranging. Officials in some jurisdictions have, to varying degrees from limiting to outright banning, policed newly introduced products deemed harmful to the public interest. For example, some states take a hardline stance on products deemed especially high-risk, designed to specifically appeal to underage purchasers, or those that hide the fact that they are alcoholic or include harmful ingredients. Retailers who sell these banned products risk fines and license suspension, cancelation, or revocation.

An example of a banned product is 190-proof Everclear, which is 95 percent alcohol by volume. The grain-based spirit has faced bans in more than a dozen jurisdictions, including Maryland, West Virginia, and North Carolina.<sup>xix</sup> Under pressure from university presidents concerned about its popularity among binge-drinking students, the Maryland legislature banned the sale of the high-alcohol Everclear in 2014.<sup>xx</sup> Maryland lawmakers hoped the ban would prevent sexual assault, typically associated with heavy drinking, on its college campuses.<sup>xxi</sup> Everclear's use in party punch, thanks to its extremely high alcohol volume, led to students "inadvertent[ly] drinking" to an excessive extent, according to one university official.<sup>xxii</sup> However, some sexual assault survivor advocates questioned the effectiveness of an Everclear ban at preventing sexual violence and argued that if schools want to reduce sexual assault, they should focus on improving students' understanding of consent, rather than implement alcohol bans.<sup>xxiii</sup> After all, students who want to get drunk will presumably find other ways to do it without Everclear.<sup>xxiv</sup>

Another ban—and one more demonstrably successful—was that of alcoholic energy drinks starting in 2010. A flurry of states enacted bans in response to an incident in which dozens of Central Washington University students fell seriously sick after drinking Four Loko, a popular

alcoholic energy drink.<sup>xxv</sup> Within a month, licensees scrambled to remove the dangerous drinks from their shelves.<sup>xxvi</sup> Today, because of bans in several states<sup>xxvii</sup> and a damning study on the risks and negative effects consumption of alcoholic energy drinks by the U.S. Food and Drug Administration,<sup>xxviii</sup> nearly all producers have discontinued production of the drinks or changed the formula<sup>xxix</sup> to reduce the danger of consumption of the drinks.

## **B. Dram Shop Liability**

Bans are not the end of it. Between 2006 and 2010, alcohol use was at the root of 88,000 deaths in the U.S. per year.<sup>xxx</sup> It is not a low-risk commodity, and state courts and legislatures decided long ago that the sellers of alcohol should bear some of the risk along with the consumer. Retailers are bound to honor the “obligations to both [their] patrons and the community [they] serve” that come with their license to sell, produce, or distribute.<sup>xxxi</sup> At a glance, a licensee who runs a bar has a duty to respect permitted operating hours; refuse to serve minors; refuse to serve drunks; maintain orderly premises and more. Of particular significance is a bar or restaurant owner’s possible liability for injury or property damage caused by those customers let loose on the streets after a night of excessive drinking.<sup>xxxii</sup> Under these laws, known as dram shop laws, liability is typically the sum of a common formula across the states:

Generally, to establish a prima facie case under a dram shop act, the plaintiff must prove that the immediate tortfeasor was an intoxicated person; that an eligible party defendant, or one of its agents, sold, served or furnished intoxicating beverages to the tortfeasor; that as a proximate cause of the furnishing of an intoxicating beverage, the tortfeasor continued to be intoxicated, and that such intoxication was the cause or a contributing cause of the injuries to an eligible plaintiff.<sup>xxxiii</sup>

Dram shop laws demonstrate the enormous responsibility a licensee accepts by obtaining an alcohol license. Serving a drunk customer who later causes injury, however unintentional, could

result in not only serious injury or death of an innocent bystander, but revocation of a liquor license and serious monetary losses in civil liability.<sup>xxxiv</sup>

### **C. Advertising Restrictions**

Beyond the simple sale of certain beverages, state licensing boards also regulate the marketing of those beverages. Restrictions on aggressive or overreaching sales tactics that tend to promote binge drinking or underage drinking are common. States take several approaches to these goals. Beyond licensing and policing of alcoholic beverage retailers at the point of sale, some states restrict advertising of alcoholic beverages in locations visited or media commonly viewed by minors. To pass constitutional muster, lawmakers must take care to draft such restrictions narrowly to limit exposure of the target advertising to young people. Otherwise, they may run afoul of First Amendment free speech protections.

One of the first successful advertising restrictions aimed at protecting young people was enacted in Baltimore in 1994. Local lawmakers enacted the ordinance “to promote the welfare and temperance of minors exposed to advertisements for alcoholic beverages by banning such advertisements in particular areas where children are expected to walk to school or play in their neighborhood.”<sup>xxxv</sup> The Baltimore City Council backed up its new regulation with extensive research demonstrating that underage drinking was involved in at least half of all major causes of death among minors and that there was a connection “between underage drinking and the widespread advertising of alcoholic beverages.”<sup>xxxvi</sup> The Court of Appeals for the Fourth Circuit held the ordinance was constitutional, finding that the limited ban on alcohol advertising in certain

areas “directly and materially advance[d] Baltimore's interest in promoting the welfare and temperance of minors.”<sup>xxxvii</sup>

More recently, the Virginia Alcoholic Beverage Control Board (the “Board”) ran into trouble with the First Amendment when it enacted a regulation prohibiting advertisements for alcohol in college newspapers.<sup>xxxviii</sup> The regulation provided, in relevant part:

Advertisements of alcoholic beverages are prohibited in publications not of general circulation that are distributed or intended to be distributed primarily to persons under 21 years of age. All advertisements of alcoholic beverages are prohibited in publications distributed or intended to be distributed primarily to a high school or younger age level.<sup>xxxix</sup>

As part of its efforts to curb underage or abusive drinking at universities, the Board prohibited “qualifying publications may not print advertisements for beer, wine, or mixed beverages unless the ads are ‘in reference to a dining establishment.’”<sup>xl</sup> Two college newspapers filed suit challenging the new regulations under the First Amendment, and the District Court for the Eastern District of Virginia found the relevant Virginia regulations facially unconstitutional, granting summary judgment for the newspapers.<sup>xlix</sup> The Board appealed to the Fourth Circuit Court of Appeals specifically on the issue of the constitutionality of 3 Va. Admin. Code § 5-20-40(B)(3), and the Fourth Circuit reversed the district court. Applying the *Central Hudson*<sup>xliii</sup> test for the constitutionality of restrictions on commercial speech, the Fourth Circuit concluded that the regulation passed each prong of the four-part test.<sup>xliv</sup> A regulation passes the test when: 1) “the expression is protected by the First Amendment”; 2) “the asserted governmental interest is substantial”; 3) “the regulation directly advances the governmental interest asserted”; and 4) the regulation “is not more extensive than is necessary.”<sup>xlv</sup> Vital to the Fourth Circuit decision were its findings on the third and fourth prongs: that “the link between § 5-20-40(B)(3) and decreasing demand for alcohol by college students [was] amply supported by the record”<sup>xlvi</sup> and that the

regulation was “narrowly tailored.”<sup>xlvii</sup> Specifically, the Fourth Circuit determined that the regulation was narrowly tailored because it prohibited only certain types of alcohol advertisements and applied only to college student publications.<sup>xlviii</sup>

### **III. Licensing’s Reach Goes Far Beyond the Who Can Sell Booze**

An important aspect of holding a liquor license is that it is a privilege—if a business fails to stay in compliance with the law, local authorities will not hesitate to suspend or to revoke it. This gives state and local governments remarkable control and leverage over the very livelihoods of alcohol producers, distributors, and retailers. Just as a lawyer or a doctor without a license cannot practice without risking fines, license revocation, or even prison, so cannot an alcohol seller. Such grave economic options for punishment give alcohol authorities the teeth they need to ensure widespread compliance.

Because of licensing’s civil nature, states have designed specific and flexible due process and punishment schemes for infractions. A look at New York’s setup is demonstrative. Besides any criminal or civil court proceeding, a licensee may be subject to a disciplinary proceeding before the State Liquor Authority (the “SLA”). First, the SLA will issue a Notice of Pleading to the licensee that allegedly committed a violation.<sup>xlix</sup> The Notice of Pleading will contain the date of the offense, the relevant code section that has been violated, the maximum penalty if the licensee is found guilty of the violation, and a pleading date by which the licensee must enter a plea in response to their citation.<sup>1</sup> From there, the violation will be resolved by “an administrative hearing[,], a “no contest” plea to the charges[,], or [a settlement] negotiated between the licensee and the SLA prosecutor” reviewable by members of the SLA.<sup>li</sup> Punishments vary widely and are



within the SLA’s discretion.<sup>lii</sup> The SLA has the authority to suspend, cancel, or wholly revoke a license.<sup>liii</sup> Instead, or in addition to suspension, cancellation, or revocation, the SLA may fine a licensee.<sup>liv</sup> Specifically, for retailers, the fine can be up to \$10,000 per each violation.<sup>lv</sup> The fines can rack up quickly—for example, a restaurant who sells drinks to minors could be fined \$10,000 per drink served to a minor, not per minor served.

Licensing regulations have wide-ranging effects far beyond the confines of the liquor store or the local bar—regulations also mix with zoning and community planning decisions. Besides the obvious benefits of creating an orderly marketplace and protecting public health and safety by reducing underage and binge drinking, some regulations successfully protect communities from the plummeting property values and crime that oftentimes accompany newly sprouted liquor stores.<sup>lvi</sup> In some states, there are also restrictions prohibiting the sale of alcohol within a certain distance from a school or a church.<sup>lvii</sup>

A recent case in Georgia is illustrative of the tug-of-war between a local authority’s discretion in granting licenses and license applicants’ demands for guidance and fairness.<sup>lviii</sup> This year, the Board of Commissioners of Gordon County (“Gordon County”) denied Sharee Baps Corporation’s (“SBC”) liquor license application.<sup>lix</sup> SBC sought review of the denial of a license by the Superior Court of Gordon County, which affirmed Gordon County’s denial.<sup>lx</sup> SBC then appealed that decision to the Court of Appeals of Georgia.<sup>lxi</sup> The Court of Appeals embarked on an extensive review of Gordon County’s alcohol licensure ordinances. Of relevance was Section 7-117(f), which provides:

No license shall issue for a location where the nearest point of the main structure of the business is located within one thousand (1,000) feet of the nearest point of the main structure of any school ... as measured in a straight line between the closest points of the two (2) structures.<sup>lxii</sup>

In addition to considering the distance of a proposed liquor seller from a school, the Board is tasked with evaluating the effect of the proposed liquor seller's business on the public interest.<sup>lxiii</sup> Section

7-111 provides that the following must be considered in the Board's evaluation:

(1) The applicant's reputation, character, and mental capacity to conduct this business, personal associations, record of arrest or reputation in any community in which he or she has resided, and whether applicant is likely to maintain the operation of the business for which he or she is seeking a license in conformity with federal, state or local laws.

...

(5) The board of commissioners shall also give consideration to such other factors as may affect the health and general welfare of the unincorporated areas of Gordon County, to include the type of license applied for, the effect of that license will have on schools, public parks, and churches in the area, the effect of granting of the license will have on existing land uses in the area, the effect the granting of the license will have on existing land uses in the area, the character of the area and its peculiar suitability for the particular use sought, and the congestion of roads and streets. These items shall receive reasonable consideration with a general view of promoting desirable living conditions, and sustaining the stability of neighborhood property values.<sup>lxiv</sup>

Clearly, obtaining a liquor license from Gordon County is not an easy feat. Under Section 7-111(1), county officials are required to do more than a simple criminal background check on an applicant. It is within their discretion to seek out opinions on an applicant's character and reputation; investigate an applicant's mental capacity to run a business that sells alcohol; interview "personal associations" or friends and family of the applicant; and examine an applicant's reputation in "any community" in which an applicant has resided. Under Section 7-111(5), county officials are required to consider even more variables, such as a liquor store's effect on schools, parks, churches, and traffic in the area.

At the public hearing on SBC's application, a concerned resident and member of the Gordon County Board of Education appeared and spoke in opposition to the application.<sup>lxv</sup> He testified that he believed the presence of alcohol so close to a school would have a negative influence on children.<sup>lxvi</sup> He further claimed that "sometimes students sneak off of campus during

the school day and that adults might purchase alcohol for students from the convenience store.”<sup>lxvii</sup> He presented no evidence to support the validity of his concerns.<sup>lxviii</sup> After consideration of the resident’s testimony and the required factors under the relevant Gordon County ordinances, Gordon County denied SBC’s testimony, based in large part on the resident’s unsupported testimony.<sup>lxix</sup>

The Court of Appeals reversed and remanded.<sup>lxx</sup> Today, SBC is still fighting to obtain a liquor license. A key aspect of the Court’s reversal was a reminder to the lower courts of the need for “ascertainable standards by which an applicant by intelligently seek to qualify for a license.”<sup>lxxi</sup> The Gordon County case shows that although a local licensing entity’s authority is extensive, it cannot be inexplicable.

However, some state courts allow more leeway to their local licensing organizations. In 2013, the City Council of Newport, Minnesota (“Newport”), denied Stephen Linn’s (“Linn”) application for a liquor license.<sup>lxxii</sup> Linn appealed Newport’s decision to the Court of Appeals of Minnesota.<sup>lxxiii</sup> In short, Newport denied Linn’s application because it was concerned about the welfare of the city.<sup>lxxiv</sup> Specifically, Newport was concerned that Linn sought to open his liquor store right next to an existing liquor store, because it believed two back-to-back liquor stores would harm Newport’s image.<sup>lxxv</sup> Newport also doubted the small city—with a population of only 3,400 people—even needed a second liquor store.<sup>lxxvi</sup> Finally, it decided a more diverse set of businesses would be better for it, not another liquor store.<sup>lxxvii</sup>

Linn argued that Newport was wrong to deny his application when the city did not have specific regulations or standards on the books to give him guidance regarding how many liquor stores are permitted in the city or where a liquor store should be established.<sup>lxxviii</sup> The Court rejected Linn’s plea for guidance. It held that “a city council has broad discretion to deny a liquor

license ‘when, in the judgment of the council, the welfare of the city suggests such action.’<sup>lxxxix</sup> It concluded that a court will interfere only “to prevent an abuse of discretion and will grant relief from unreasonable, arbitrary, capricious, or fraudulent acts.”<sup>lxxx</sup>

These two cases demonstrate the wide range of discretion states give to their licensing authorities. It may seem unfair that in Minnesota, city councils appear to have considerably more flexibility in denying or granting applications than they do in Georgia. However, such local control over licensing often has the benefit of being more democratic than they may be otherwise. Some states or counties still have blue laws in effect.<sup>lxxxi</sup> Many states have different laws on the availability of alcohol depending on the county<sup>lxxxii</sup> or the day of the week.<sup>lxxxiii</sup> These enactments generally reflect the will of the people who vote and elect the lawmakers who draft them. The path to changing these is local—through city councils, boards of commissioners, or state legislatures. In effect, Americans have the intended result of the Twenty-First Amendment: state control.

#### **IV. Conclusion**

For almost a century, American alcohol licensure has been a widely effective strategy of accomplishing the nation’s goals of temperance, revenue collection, and public health and safety. However, to keep alcohol regulations as effective and protective to consumers as possible, their enforcement must keep evolving. The economy of alcohol production, distribution, and sales is so intertwined with today’s technology, crime and punishment, laws, and culture that it cannot be considered in a vacuum. Local, state, and federal governments must collaborate to effectively take on the next alcohol issues of the day. The most effective public safety efforts are multi-faceted—

they consider new technology, various audiences, educational outreach, and creative ways to engage the public and make our communities stronger. But the guiding principles will remain the same: with the decades-old goals of an orderly marketplace and the maintenance and improvement of public health and safety, the alcohol licensing bureaucracy will continue delivering beneficial results to the American public.

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<sup>i</sup> U.S. CONST. amend. XXI.

<sup>ii</sup> *Ziffrin, Inc. v. Reeves*, 308 U.S. 132, 138 (1939).

<sup>iii</sup> *About Us*, NAT'L ALCOHOL BEVERAGE CONTROL ASS'N, <https://www.nabca.org/about-us>.

<sup>iv</sup> *Who We Are*, N.Y. STATE LIQUOR AUTH., <https://sla.ny.gov/about-new-york-state-liquor-authority>.

<sup>v</sup> *About Us*, ALA. ALCOHOLIC BEVERAGE CONTROL BD., <http://alabcboard.gov/about-us>.

<sup>vi</sup> *Id.*

<sup>vii</sup> Brief of the National Alcohol Beverage Control Association et al. as Amici Curiae Supporting Petitioners, *Granholm v. Heald*, 544 U.S. 460 (2004) (No. 03-1116), 2004 WL 389419, at \*8.

<sup>viii</sup> *Id.*

<sup>ix</sup> *North Dakota v. United States*, 495 U.S. 423, 432 (1990); *Southern Wine & Spirits of Am., Inc. v. Div. of Alcohol & Tobacco Control*, 731 F.3d 799, 808-11 (8th Cir. 2013) (concluding that Missouri's regulation of liquor sales with a tiered system to be a legitimate state interest).

<sup>x</sup> *Alcoholic Beverage Control Study*, ALCOHOLIC BEVERAGES DIV. OF THE STATE OF IOWA (July 2018), at 5, [http://www.ncsla.org/pdf/news/IA\\_ABD\\_Alc\\_Bev\\_Control\\_Study-Tied\\_House\\_laws\\_July2018.pdf](http://www.ncsla.org/pdf/news/IA_ABD_Alc_Bev_Control_Study-Tied_House_laws_July2018.pdf).

<sup>xi</sup> *Id.*

<sup>xii</sup> *Regulatory Value*, NAT'L BEER WHOLESALERS ASS'N, <https://www.nbwa.org/regulatory-value>.

<sup>xiii</sup> Kevin McArdle, *River Water and Rubbing Alcohol Found in Restaurant Booze Bottles*, NEW JERSEY 105.1 (May 24, 2013), <http://nj1015.com/river-water-and-rubbing-alcohol-found-in-restaurant-booze-bottles-audio/>; Peter Weber, *Operation Swill: New Jersey's top-shelf liquor scam*, THE WEEK (May 24, 2013), <https://theweek.com/articles/463955/operation-swill-new-jerseys-topshelf-liquor-scam>.

<sup>xiv</sup> *Id.*

<sup>xv</sup> *Id.*

<sup>xvi</sup> Lauren Tyson, *What Can Happen When a Licensee Refills Spirits Bottles*, LIQUOR LICENSE ADVISOR (May 25, 2013), <http://theliquorlicenseadvisor.com/what-can-happen-when-a-licensee-refills-spirits-bottles/>.

<sup>xvii</sup> *Franchisee of T.G.I. Friday's Targeted in "Operation Swill" to Pay \$500,000 for Replacing Premium Alcohol with Cheaper Substitutes*, OFFICE OF THE ATTORNEY GENERAL OF N.J. (July 31, 2013), <https://nj.gov/oag/newsreleases13/pr20130731b.html>.

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<sup>xviii</sup> *N.J. Bar Accused of Substituting Rubbing Alcohol For Premium Liquor*, CBSNEWYORK.COM (May 23, 2013), <https://newyork.cbslocal.com/2013/05/23/n-j-bar-accused-of-substituting-rubbing-alcohol-for-premium-liquor/>; Christopher Robbins, *Matawan Council mulls pulling liquor license of Operation Swill-implicated restaurant*, NJ.COM (June 7, 2013), [https://www.nj.com/monmouth/index.ssf/2013/06/matawan\\_council\\_mulls\\_pulling\\_liquor\\_license\\_of\\_operation\\_swill-implicated\\_restaurant.html](https://www.nj.com/monmouth/index.ssf/2013/06/matawan_council_mulls_pulling_liquor_license_of_operation_swill-implicated_restaurant.html).

<sup>xix</sup> Tim Carman, *Everclear wants you to start thinking of it as a craft cocktail ingredient. Good luck with that.*, WASH. POST (Sept. 26, 2018), <https://www.washingtonpost.com/news/voraciously/wp/2018/09/26/everclear-wants-you-to-think-its-a-craft-cocktail-ingredient-good-luck-with-that/>.

<sup>xx</sup> Robert Lang, *Senate Approves Ban on 190-Proof Alcohol*, WBAL NEWS RADIO (Feb. 5, 2014), <http://www.wbal.com/article/105261/21/senate-approves-ban-on-190-proof-alcohol>.

<sup>xxi</sup> Tim Mak, *Maryland's Plan to Stop Rape: Ban 'Jungle Juice'*, THE DAILY BEAST (July 7, 2014), <https://www.thedailybeast.com/marylands-plan-to-stop-rape-ban-jungle-juice>.

<sup>xxii</sup> *Id.*

<sup>xxiii</sup> *Id.*

<sup>xxiv</sup> *Id.*

<sup>xxv</sup> April Fulton, *Four Loko Alcoholic Energy Drinks Blamed for Sickening College Students*, NAT'L PUBLIC RADIO (Oct. 26, 2010), <https://www.npr.org/sections/health-shots/2010/10/26/130833815/four-loco-alcoholic-energy-drinks-blamed-for-sickening-central-washington-university-students>.

<sup>xxvi</sup> Nina Mandell, *Caffeinated Four Loko will be off shelves across the country by Dec. 13*, N.Y. DAILY NEWS (Nov. 25, 2010), <https://www.nydailynews.com/news/national/caffeinated-loko-shelves-country-dec-13-article-1.452337>.

<sup>xxvii</sup> Heather Lockwood, *Controversial alcohol energy drinks to be banned in Michigan*, ANN ARBOR NEWS (Nov. 4, 2010), <http://www.annarbor.com/news/alcoholic-energy-drinks-the/>; *Gov. Gregoire joins Liquor Control Board chair to announce ban on alcoholic energy drinks*, STATE OF WASH., OFFICE OF THE GOVERNOR (Nov. 10, 2010), <https://lcb.wa.gov/publications/releases/2010-11-10-gov-press-release-.pdf>; *see also* Larry Greenemeier, *Why Are Caffeinated Alcoholic Energy Drinks Dangerous?*, SCIENTIFIC AM. (Nov. 9, 2010), <https://www.scientificamerican.com/article/caffeine-alcohol-mix-dangerous/> (discussing bans in Pennsylvania, Oklahoma, Michigan, and Chicago, Illinois).

<sup>xxviii</sup> CNN Wire Staff, *FDA calls 7 caffeine-alcohol drinks unsafe*, CNN (Nov. 17, 2010), <http://www.cnn.com/2010/HEALTH/11/17/alcohol.caffeine.drinks/index.html>.

<sup>xxix</sup> Andrea Canning, *Four Loko Drops Caffeine From Controversial Alcoholic Energy Drink*, ABC NEWS (Nov. 17, 2010), <https://abcnews.go.com/US/loko-removes-caffeine-energy-drink/story?id=12167659>; Brian Feldman, *R.I.P. Four Loko, 2005-2014*, THE ATLANTIC (Mar. 26, 2014), <https://www.theatlantic.com/national/archive/2014/03/rip-four-loko/359602/>; *Four Loko Returns to Shelves, Minus One Ingredient*, CONVENIENCE STORE NEWS (April 11, 2011), <https://csnews.com/four-loko-returns-shelves-minus-one-ingredient>.

<sup>xxx</sup> *Facts Sheets: Alcohol Use & Your Health*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/alcohol/fact-sheets/alcohol-use.htm>.

<sup>xxxi</sup> <https://www.oasas.ny.gov/publications/pdf/oasasretail.pdf>

<sup>xxxii</sup> Kacey R. Scott, *In Heaven There Is No Beer, That's Why We Drink It Here: Making Kansas Roads Safer with Dram Shop Liability*, 57 WASHBURN L.J. 543, 544-45 (2018).

<sup>xxxiii</sup> *Id.* at 549.

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- xxxiv Larry Copeland, *Horrific N.C. crash puts spotlight on dram shop laws*, USA TODAY (Nov. 24, 2012), <https://www.usatoday.com/story/news/2012/11/24/dram-shop-laws/1660707/>.
- xxxv *Anheuser–Busch, Inc. v. Schmoke*, 63 F.3d 1305, 1314-17 (4th Cir. 1995), *judgment vacated on other grounds*, 517 U.S. 1206 (1996), *readopted*, 101 F.3d 325 (4th Cir. 1996), *cert. denied*, 520 U.S. 1204 (1997).
- xxxvi *Id.* at 1309.
- xxxvii *Id.* at 1314.
- xxxviii *Educ. Media Co. at Va. Tech., Inc. v. Swecker*, 602 F.3d 583 (4th Cir. 2010).
- xxxix 3 Va. Admin. Code § 5-20-40(A)(2) (2005).
- xl *Swecker*, 602 F.3d at 587 (quoting 3 Va. Admin. Code § 5-20-40(B)(3) (2005)).
- xli *Id.*
- xlii *Id.* at 586.
- xliii *Central Hudson Gas & Electric Corp. v. Public Service Commission of N.Y.*, 447 U.S. 557, 566 (1980).
- xliv *Swecker*, 602 F.3d at 588-591.
- xliv *Central Hudson*, 447 U.S. at 566.
- xlvi *Swecker*, 602 F.3d at 590.
- xlvi *Id.*
- xlvi *Id.* at 590-91.
- xlvi *State Liquor Authority Handbook for Retail Licensees*, N.Y. STATE LIQUOR AUTH. (June 2018), at 24, <https://sla.ny.gov/system/files/documents/2018/06/stateliquorauthority-retaillicenseeshandbook2018.pdf>.
- l *Id.*
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- liv *Id.*
- lv *Id.*
- lvii Robert Nash Parker & Randi S. Cartmill, *Alcohol and Homicide in the United States: 1934-1995—Or One Reason Why U.S. Rates of Violence May Be Going Down*, 88 J. CRIM. L. & CRIMINOLOGY 1369, 1376 (1998); Alicia Samuels, *Violent Crime Linked More to Baltimore Liquor Stores Than to City’s Bars and Restaurants*, JOHNS HOPKINS UNIV. (Sept. 26, 2018), <https://hub.jhu.edu/2018/09/26/baltimore-liquor-stores-violent-crime/>.
- lvii *See Reasonableness of Statutory or local regulations prohibiting sale or license for sale of intoxicating liquors within prescribed distance from church, school or other institution*, 119 A.L.R. 643 (1939).
- lviii *In re Sharee Baps Corp.*, 346 Ga. App. 434 (2018).
- lix *Id.* at 434.
- lx *Id.*
- lxi *Id.*
- lxii *Id.* at 435.
- lxiii *Id.*
- lxiv *Id.*
- lxv *Id.* at 436.
- lxvi *Id.*
- lxvii *Id.*

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lxviii *Id.* at 438.

lxix *Id.* at 437.

lxx *Id.* at 439.

lxxi *Id.* at 437-38 (quoting *Arras v. Herrin*, 255 Ga. 11, 12 (1985)).

lxxii *Linn v. City of Newport*, No. A12-1446, 2013 WL 1707682, at \*1 (Minn. Ct. App. Apr. 22, 2013).

lxxiii *Id.*

lxxiv *Id.*

lxxv *Id.*

lxxvi *Id.* at \*2.

lxxvii *Id.*

lxxviii *Id.* at \*3.

lxxix *Id.* at \*3 (quoting *Polman v. City of Royalton*, 311 Minn. 555, 556 (1977)).

lxxx *Id.* at \*1.

lxxxi *Sunday Alcohol Sales: History & Analysis*, NAT'L ALCOHOL BEVERAGE CONTROL ASS'N, <https://www.nabca.org/sunday-alcohol-sales-history-and-analysis>.

lxxxii 'Dry' towns throughout the US, ALCOHOL.ORG, <https://www.alcohol.org/statistics-information/dry-towns/>.

lxxxiii Christopher Smith Gonzalez, *Texplainer: Why Can't I Buy a Car or Liquor on Sundays?*, TEX. TRIBUNE (Mar. 11, 2011), <https://www.texastribune.org/2011/03/11/why-cant-i-buy-a-car-or-liquor-on-sundays/>.